

Regulation 216.3 (b) Pesticide Procedures

The US Government's Title 22, Code of Federal Regulations, Part 216, also known as 'Regulation 216', signed in 1976, are intended to implement requirements of the US National Environmental Policy Act (NEPA, of 1970) as they affect USAID programs in other countries.

All USAID activities are subject to evaluation via, at minimum, an Initial Environmental Examination (IEE) and at maximum an Environmental Assessment (EA), and rarely an Environmental Impact Statement (EIS) if national boundaries are crossed. And because of high risk concerns presented by pesticides, the USAID environmental regulations require that at least the 12 factors outlined in the Pesticide Procedures described in 22 CFR 216.3 (b)(1)(i) (a through l) be addressed in the IEE or EA for any program that includes assistance for the procurement or use of pesticides. For several years, the Agency has asked that these factors be examined using a systems approach in a particular type of document or tool, termed a "Pesticide Evaluation Report and Safer Use Action Plan" (PERSUAP), which is submitted as an attachment to, and supporting the IEE.

The PERSUAP focuses on the particular circumstances of the country's pesticide regulation and safety systems, the program in question, opportunities for certification/standards-driven compliance, the risk management choices available, "off the shelf" Integrated Pest Management solutions available, and how the SUAP's recommendations are to be put into risk management action plans to be implemented in the field.

Why is a local-level assessment such as a PERSUAP needed for USAID pesticide programs? To help in understanding the utility, consider the US system for promoting pesticide safety. In the USA, when the Environmental Protection Agency (EPA) registers pesticides for use, it specifies the manner in which the product can be "safely" used (that is, with an acceptably small risk), including safety equipment needed when applying the pesticide, how to apply it, the allowed uses, storage, transport, and disposal. But the context in which EPA makes these registration decisions is important to note. An extensive system of capabilities and resources exist in the USA that help give EPA confidence these specifications will be followed and the product will be used appropriately. These include a 97% literacy rate—meaning most of the population can read labels (contrast this with low adult literacy rates for many developing countries); close control by EPA over the content of the pesticide label; training requirements and programs for those pesticide products that require applicator certification—like for many EPA acute toxicity class I or II pesticides and Restricted Use Pesticides (RUPs); worker protection requirements; occupational safety regulations; and relatively effective federal, state and local enforcement mechanisms.

Therefore, in allowing the use of certain pesticides in its overseas programs, USAID cannot rely on the same societal capabilities and resources that the USEPA does to assure appropriate use of the product. The preparation of a PERSUAP gives a program manager the opportunity to consider practical actions by which to reduce the risks of using pesticide products in a program, taking into consideration the context in which the products will be used, the particular elements of the program, and the different capacities of the partners involved.

When a project includes assistance for procurement or use, or both, of pesticides registered for the same or similar uses by USEPA *without restriction*, the Initial Environmental Examination for the project shall include a separate section evaluating the economic, social and environmental risks and benefits of the planned pesticide use to determine whether the use may result in significant environmental impact. Factors to be considered in such an evaluation shall include, *but not be limited to* the following:

- (a) The USEPA registration Status of the requested pesticide;
- (b) The basis for selection of the requested pesticide;
- (c) The extent to which the proposed pesticides use is part of an integrated pest management program;
- (d) The proposed method or methods of application, including availability of appropriate application and safety equipment;
- (e) Any acute and long-term toxicological hazards, either human or environmental, associated with the proposed pesticide use and measures available to minimize such hazards;
- (f) The effectiveness of the requested pesticide for the proposed use;
- (g) Compatibility of the proposed pesticide with target and non-target ecosystems;
- (h) The conditions under which the pesticide is to be used, including climate, flora, fauna, geographer hydrology, and soils;
- (i) The availability and effectiveness of other pesticides or non-chemical control methods;
- (j) The requesting country's ability to regulate or control the distribution, storage, use and disposal of the requested pesticide;
- (k) The provisions made for training of users an applicators; and
- (l) The provisions made for monitoring the use and effectiveness of the pesticide.

If the IEE finds a proposed pesticide that will significantly affect the human environment, a Threshold Decision will include a recommendation for the preparation of an EA. Also, provisions must be made to mitigate the adverse effects of the pesticide. If a pesticide is categorized by the USEPA as a RUP due to user hazard, a special evaluation of user hazard will be included in the IEE analysis, the recipient government will be made aware of the hazard, and a mitigation action plan will be made and implemented with additional technical assistance.

If a proposed pesticide is: also categorized as a RUP on a basis other than user hazard (for example severe environmental damage risk); or for which a notice of rebuttable presumption

against USEPA re-registration; or a notice of intent to cancel USEPA registration; or a notice to suspend USEPA registration has been issued by USEPA, then the Threshold Determination will ensure the preparation of an EA.

If USEPA is taking an action against the active registration of a pesticide, the relevant technical and scientific factors will be discussed with the requesting government and considered in the IEE or EA. The IEE especially is intended to be a “living document” that can be amended as additional information becomes available. If the pesticides cannot be identified at the time of the project design (project paper) document approval, procurement and use of such pesticides cannot occur without approval of the Mission Director or Assistant Administrator who signed the project paper.

Both the IEE and EA processes will include provisions for monitoring of human health and environmental impacts as well as implementation & effectiveness of mitigative actions; and for public hearings and participation.

In conclusion, Regulation 216 finds that certain environmental compliance procedures and a process must be followed on overseas projects to:

- create modern state-of-the-art development,
- achieve optimal economic results with every dollar invested,
- avoid harming people in both our partner countries and the US,
- avert unintended negative economic growth,
- reinforce practical civil society and democracy through transparency and public participation,
- reduce diplomatic incidents,
- engender public trust and confidence in USAID, and
- comply with the law

USAID Program managers are generally responsible for assuring that environmental review requirements (IEE, Threshold Determinations, Scoping Statements, EA, or EIS) for their programs are met, including the drafting of IEE/PERSUAP. Private, non-governmental and corporate implementers of activities for USAID are responsible for ensuring that their programs are compliant with Regulation 216, and do regular reporting of such compliance and mitigation recommendations effectiveness. USAID is responsible for reviewing, addressing issues in, and filing these reports.

For a PERSUAP, MEO and CTO will follow a project to see if it implements SUAP recommendations, and will require monitoring reports on recommendation implementation. BEOs may also audit projects to determine if recommendations are implemented.

Required environmental documents (IEE, Threshold Determinations, Scoping Statements, EA, or EIS) should be reviewed by the CTO with the MEO, and signed by the MEO and BEO. BEO files and tracks environmental documents and can perform audits on these. As for all environmental reviews, guidance and assistance for PERSUAPs is available from the appropriate MEO, REO, and BEO.